

**UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT**

**REVISED PLAN FOR
FURNISHING REPRESENTATION
PURSUANT TO THE
CRIMINAL JUSTICE ACT**

(18 U.S.C. § 3006A)

**Originally Adopted by the Judges
of the District of Vermont
January 18, 2000**

**Revised and Amended
July 1, 2000**

**Re-Approved by the Judicial Council
for the Second Circuit
July 14, 2000**

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CRIMINAL JUSTICE ACT (CJA) PLAN

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APPENDICES:

Circuit Approval of Vermont's Revised Plan Effective July 14, 2000.

CJA Panel Application Form

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

CRIMINAL JUSTICE ACT (CJA) PLAN

I. AUTHORITY.

Pursuant to the Criminal Justice Act of 1964 as amended (CJA), Section 3006A of Title 18, United States Code, and the *Guidelines for the Administration of the Criminal Justice Act and Related Statutes (CJA Guidelines)*, Volume VII, *Guide To Judiciary Policies and Procedures*, the judges of the United States District Court for the District of Vermont hereby adopt this Plan for furnishing representation in federal court of any person financially unable to obtain adequate representation.

II. STATEMENT OF POLICY.

A. Objectives.

1. The principal objective of this Plan is to attain the ideal of equality before the law for all persons. Therefore, this Plan shall be administered so that those accused of crime or otherwise eligible for services pursuant to the Criminal Justice Act will not be deprived of any element of representation necessary for an adequate defense due to inadequate financial resources.
2. Another objective of this Plan is to particularize the requirements of the Criminal Justice Act, the Anti-Drug Abuse Act of 1988 (codified in part at Section 848(q) of Title 21, United States Code), and the *CJA Guidelines* in a way that meets the needs of this district.

B. Compliance.

1. The court, its clerk and staff, the federal public defender and staff and private attorneys appointed pursuant to the Criminal Justice Act shall comply with all *Criminal Justice Act Guidelines* and policy directives as approved by the Judicial Conference of the United States and the Committee on Defender Services and also with this Plan itself.
2. Pursuant to this Plan and at the time of the initial appointment, the clerk of court shall provide a current copy of this Plan to appointed counsel. The clerk shall

also maintain a current copy of the *Criminal Justice Act Guidelines* for use by CJA panel members and shall make known its availability to the attorneys.

III. DEFINITIONS.

- A. The term “representation” includes counsel as well as investigative, expert, or other services.
- B. The term “appointed attorney” includes private counsel appointed pursuant to this Plan, the federal public defender and staff attorneys of the federal public defender.

IV. PROVISION OF REPRESENTATION.

A. Circumstance.

- 1. Mandatory. Representation shall be provided for any financially eligible person who:
 - a. is charged with a felony or with a Class A misdemeanor; is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of Title 18, United States Code;
 - b. is charged with a violation of probation, or faces a change of a term or condition of probation (unless the modification sought is favorable to the probationer and the government has not objected to the proposed change);
 - c. is under arrest, when such representation is required by law;
 - d. is entitled to appointment of counsel in parole proceedings;
 - e. is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - f. is subject to a mental condition hearing under Chapter 313 of Title 18, United States Code;
 - g. is in custody as a material witness;
 - h. is seeking to set aside or vacate a death sentence under sections 2254 or 2255 of Title 28, United States Code;
 - i. is entitled to appointment of counsel in verification of consent proceedings pursuant to a transfer of an offender to or from the United States for the execution of a penal sentence under section 4109 of Title 18, United States Code;
 - j. is entitled to appointment of counsel under the Sixth Amendment to the Constitution; or
 - k. faces loss of liberty in a case and federal law requires the appointment of counsel.

2. Discretionary. Whenever a judge or magistrate judge determines that the interests of justice so require, representation may be provided for any financially eligible person who:
 - a. is charged with a petty offense (Class B or C misdemeanor, or an infraction) for which a sentence to confinement is authorized;
 - b. is seeking relief, other than to set aside or vacate a death sentence under sections 2241, 2254, or 2255 of Title 28, United States Code;
 - c. is charged with civil or criminal contempt who faces loss of liberty;
 - d. has been called as a witness before a grand jury, a court, the Congress, or a federal agency or commission which has the power to compel testimony, and there is reason to believe, either prior to or during testimony, that the witness could be subject to a criminal prosecution, a civil or criminal contempt proceeding, or face loss of liberty;
 - e. is proposed by the United States attorney for processing under a pretrial diversion program;
 - f. is held for international extradition under chapter 209 of Title 18, United States Code.

Representation may also be furnished for financially eligible persons in ancillary matters appropriate to the proceedings pursuant to subsection (c) of the Criminal Justice Act.

B. When Counsel Shall Be Provided.

Counsel shall be provided to eligible persons as soon as feasible after they are taken into custody, when they appear before a magistrate judge or judge, when they are formally charged or notified of charges if formal charges are sealed, or when a magistrate judge or judge otherwise considers appointment of counsel appropriate under the Criminal Justice Act, whichever occurs earliest.

C. Number and Qualifications of Counsel.

1. Number. More than one attorney may be appointed in any case determined by the court to be extremely difficult. In a capital case, the following applies:
 - a. Federal Capital Prosecutions. Pursuant to 18 U.S.C. § 3005, a person charged with a federal capital offense is entitled to the appointment of two attorneys, at least one of whom shall be learned in the law applicable to capital cases. Pursuant to 21 U.S.C. § 848(q)(4), if necessary for adequate representation, more than two attorneys may be appointed to represent a defendant in such a case.

- b. Habeas Corpus Proceedings. Pursuant to 21 U.S.C. § 848(q)(4), a financially eligible person seeking to vacate or set aside a death sentence in proceedings under 28 U.S.C. § 2254 or 2255 is entitled to appointment of one or more qualified attorneys. Due to the complex, demanding, and protracted nature of death penalty proceedings, judicial officers should consider appointing at least two counsel.
2. Qualifications. Qualifications for appointed counsel shall be determined by the court. In capital cases, the following also applies:
- a. Appointment of Counsel Prior to Judgment. Pursuant to 21 U.S.C. § 848(q)(5), at least one of the attorneys appointed must have been admitted to practice in the court in which the case will be prosecuted for not less than five years, and must have had not less than three years experience in the actual trial of felony prosecutions in that court. Pursuant to 18 U.S.C. § 3005, at least one of the attorneys appointed must be knowledgeable in the law applicable to capital cases.
 - (1) Pursuant to 18 U.S.C. § 3005, when appointing counsel in federal capital prosecutions, the court shall consider the recommendation of the federal public defender.
 - b. Appointment of Counsel After Judgment. Pursuant to 21 U.S.C. § 848(q)(6), at least one of the attorneys appointed must have been admitted to practice in the court of appeals for not less than five years, and must have had not less than three years experience in the handling of appeals in felony cases in the court.
 - c. Attorney Qualification Waiver. Pursuant to 21 U.S.C. § 848(q)(7), the presiding judicial officer, for good cause, may appoint an attorney who may not qualify under 21 U.S.C. § 848(q)(5) or (q)(6), but who has the background, knowledge, and experience necessary to represent the defendant properly in a capital case, giving due consideration to the seriousness of the possible penalty and the unique and complex nature of the litigation.

D. Eligibility for Representation.

- 1. Factfinding. The determination of eligibility for representation under the Criminal Justice Act is a judicial function to be performed by a federal judge or magistrate judge after making appropriate inquiries concerning the person's financial condition.
- 2. Disclosure of Change in Eligibility. If, at any time after appointment,

counsel obtains information that a client is financially able to make payment, in whole or in part, for legal or other services in connection with his or her representation, and the source of the attorney's information is not protected as a privileged communication, counsel shall advise the court.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION (FPDO).

A. Establishment.

1. Pursuant to subsections (g)(1) and (g)(2)(A) of the Criminal Justice Act, a Federal Public Defender Organization (FPDO) has been authorized for the District of Vermont in conjunction with the Northern District of New York and the Office of the Federal Public Defender is shared jointly between these two districts. As such, the FPD is responsible for providing legal services throughout the judicial districts of Vermont and the Northern District of New York. Staffed offices will be maintained at Albany and Syracuse, New York and Burlington, Vermont.
2. Upon organization of the federal public defender's office, the court shall be notified of the availability of the FPDO to accept appointments for legal representation.

B. Supervision of Defender Organization. The federal public defender shall be responsible for the supervision and management of the FPDO including its professional and administrative staffs. The federal public defender shall be considered appointed to all cases assigned to that organization. Subsequent case assignments to individual staff attorneys may be made at the discretion of the federal public defender.

C. Management of CJA Panel. Within the jurisdiction of the District of Vermont, the management of the CJA Panel and the systematic assignment of cases to CJA panel members shall remain the responsibility of the district court.

D. Assignment of Cases. Within the jurisdiction of the District of Vermont, all eligible cases shall be considered to be automatically assigned to the FPDO. Should a conflict of interest or other event occur involving the appointment and representation of the federal public defender and an accused, the federal public defender (or FPDO staff attorney assigned to the case) shall promptly notify the court through the clerk's office of any such conflict or problematic situation. In such situations where access to defense counsel appears crucial or absolutely critical, the clerk should notify the court immediately of the conflict, including off-hours and weekends, in order to expedite the appointment of substitute counsel. The court will decide if representation should

be terminated and will retain responsibility for the appointment of any substitute or replacement counsel.

VI. PRIVATE ATTORNEYS.

A. CJA Panel.

1. Approval. The Court shall establish a panel of private attorneys (hereinafter referred to as the "CJA Panel") who are eligible and willing to be appointed to provide representation under the Criminal Justice Act. The Court shall approve attorneys for membership on the panel after receiving recommendations from the "Panel Selection Committee," established pursuant to paragraph (B) of this Plan. Members of the CJA Panel shall serve at the pleasure of Court.
2. Size. The court, through its Panel Selection Committee, shall periodically fix the size of the CJA Panel. The panel shall be large enough to provide a sufficient number of experienced attorneys to handle the CIA caseload, yet small enough so that panel members will receive an adequate number of appointments in order to maintain their proficiency in federal criminal defense work and thereby provide a high quality of representation.
3. Eligibility. Attorneys who serve on the CJA Panel must be members in good standing of the federal bar of this district, and have demonstrated experience in, and knowledge of, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Sentencing Guidelines.

Subsection (b) of the Act provides, in part, that:

Counsel furnishing representation under the plan shall be selected from a panel of attorneys designated or approved by the court, or from a bar association, legal aid agency, or defender organization furnishing representation pursuant to the Plan.

However, when the district judge or magistrate judge presiding over a case, or the chief judge if a district judge or magistrate judge has not yet been assigned to the case, determines that the appointment of an attorney not a member of the CJA panel is in the interest of justice, judicial economy or continuity of representation, or there is a compelling circumstance warranting his or her appointment, the attorney may be admitted to the CJA panel *pro hac vice* and appointed to represent a CJA defendant. Consideration for preserving the integrity of the panel selection process suggests that such appointments should be made only in

exceptional circumstances. Further, the attorney, who may or may not maintain an office in the district, should possess such qualities as would qualify him or her for admission to the district's CJA panel in the ordinary course of panel selection.

4. Equal Opportunity. All qualified attorneys shall be encouraged to participate in the furnishing of representation in CJA cases, without regard to race, color, religion, sex, age, national origin or disabling condition. Notice of the opportunity to apply for membership to the CJA Panel shall be provided to attorneys at the time of admission to the bar of this court.
5. Terms. CJA Panel members shall serve at the pleasure of the court. Members of the panel shall serve continuously until they resign or are removed from the panel.
6. Removal from the Panel. Membership on the CJA Panel is a privilege, not a right, which may be terminated at any time by the Panel Selection Committee or by the court, as the judges, in their sole discretion, may determine.
7. Application. Application forms for membership on the CJA Panel shall be made available, upon request, by the Clerk of the Court. Completed applications shall be submitted to the Clerk of the Court who will transmit the applications to the Chairperson of the Panel Selection Committee.

B. Panel Selection Committee.

1. Membership. A Panel Selection Committee shall be established by the Court. The Committee shall consist of one district judge, one magistrate judge, the Federal Public Defender and at least one attorney from the northern and southern geographic areas of the District. The Clerk of Court or Chief Deputy Clerk shall serve as an *ad hoc* member of the Panel to provide administrative support. The Committee shall be chaired by the chief judge of the district. The Committee shall be responsible for the screening and reviewing of the qualifications of CJA Panel applicants. Upon evaluation of the applicants, the Panel shall make a recommendation to the Court regarding the appointments to the Panel.
2. Duties.
 - a. The Panel Selection Committee shall meet at least once a year to consider applications for the vacancies on the CJA Panel. The Committee shall review the qualifications of applicants and recommend, for approval by the Court, those applicants best qualified to fill vacancies. At its annual meeting, the Committee shall also review the operation and administration of the panel over the preceding year, and recommend to the court any changes deemed

necessary or appropriate by the Committee regarding the appointment process and panel management. The Committee shall also inquire annually as to the continued availability and willingness of each panel member to accept appointments. The Clerk of Court shall provide the Committee with information on the number of assignments made during the calendar year and the number of times that individuals declined appointments during the calendar year.

- b. If, at any time during the course of a year, the number of vacancies due to resignation, removal, or death significantly decreases the size of the panel, the Committee shall solicit applications for the vacancies, convene a special meeting to review the qualifications of the applicants, and select prospective members for recommendation to the Court for approval.
- c. When the names of applicants for panel membership are submitted to the Court for approval, the Committee shall furnish information to the Court regarding recruitment efforts undertaken by the Committee in furtherance of Equal Opportunity. In addition to the notification given by the Clerk to members of the bar, the Committee may also seek qualified applicants by:
 - (1) Notifying bar associations composed of minorities, persons with disabilities, and women of the availability of panel membership;
 - (2) Advertising in legal journals targeted to persons with disabilities, minorities, and women to encourage panel membership;
 - (3) Informal person-to-person recruiting of persons with disabilities, minorities and women, by panel administrators, women, minority members of the panel, and members who have disabilities;
 - (4) Contacting current or former members of the panel, or other prominent local attorneys who have disabilities or are minorities, or women to seek recommendations of other persons with disabilities, minority and women practitioners.

C. CJA Training Panel. The court in its discretion, may establish a "CJA Training Panel" consisting of attorneys who do not have the experience required for membership on the CJA Panel. Training Panel members may be assigned by the court to assist members of the CJA Panel, or Federal Public Defender in a voluntary "second chair" capacity. Training Panel members are not eligible to receive appointments independently and shall not be eligible to receive compensation for their services in assisting CJA Panel members. Whether compensation is available for

“second chair counsel” shall be determined by the court on a case-by-case basis. Prior service on the CJA Training Panel is not a requirement for membership on the CJA Panel nor will service on the Training Panel guarantee admission of an attorney to the CJA Panel.

- D. Maintenance of List and Distribution of CJA Appointments. The Clerk of the Court will be responsible for maintaining a current list of all attorneys included on the CJA Panel, with current office addresses, telephone and fax numbers, e:mail addresses, as well as a statement of qualifications and experience. The Clerk shall furnish a copy of this list to each judge and magistrate judge of this court. The list shall also be made available to the Federal Public Defender. The Clerk shall also maintain a public record of assignments to private counsel, and, when appropriate, statistical data reflecting the proration of appointments between attorneys from the Federal Public Defender Organization and private attorneys, according to the formula described in the CJA Plan for the District.

The Clerk of Court shall also maintain a record of each refusal (i.e. “pass”) by a panel attorney and the reason for each refusal. If the Clerk's Office determines that a panel member has repeatedly refused assignments, the Clerk may refer the name of the attorney to the Panel Selection Committee of this court. The Panel Selection Committee shall then consider the information provided by the Clerk and make such further inquiry as it deems appropriate.

- E. Method of Selection. Appointments from the list of private attorneys should be made on a rotational basis, subject to the court's discretion to make exceptions due to the nature and complexity of the case, an attorney's experience or geographical considerations. This procedure should result in a balanced distribution of appointments and compensation among the members of the CJA Panel and quality representation for each CJA defendant.

Upon the determination of a need for the appointment of counsel, a judge or magistrate judge shall notify the Clerk of Court of the need for counsel and the nature of the case.

The Clerk of Court shall advise the judge or magistrate judge as to the status of distribution of cases, where appropriate, as between the Federal Public Defender and the panel of private attorneys. If the judge or magistrate judge decides to appoint an attorney from the panel, the Clerk shall determine the name of the next panel member on the list who is available for appointment and shall provide the name to the appointing judge or magistrate judge. The presiding judge or magistrate judge will determine the attorney's qualifications for each appointment in order to ensure that the attorney selected has the experience and ability required to handle the particular case.

In the event of an emergency (i.e., weekends, holidays, or other non-working hours of the Clerk of Court's office) the presiding judge or magistrate judge may appoint any attorney from the list should a member of the Federal Public Defender's Office not be available. In all cases where members of the CJA Panel are appointed out of sequence, the appointing judge or magistrate judge shall notify the Clerk of Court as to the name of the attorney appointed and the date of the appointment.

F. Special Circumstances. If after appointment, counsel learns that a client is financially able to pay all or part of the fee for legal representation and the source of the attorney's information is not a privileged communication, counsel shall so advise the presiding judge. The presiding judge will take appropriate action, including but not limited to:

1. permitting assigned counsel to continue to represent the defendant;
2. terminating the appointment of counsel; or
3. ordering any funds available from a defendant to be paid pursuant to 18 U.S.C. § 3006A(f) as the interests of justice may dictate. Any amount so paid by a defendant will be considered by the presiding judge in determining the total compensation allowed to the attorney.

G. Investigative, Expert and Other Services.

1. Upon Request. Counsel for a party who is financially unable to obtain investigative, expert or other services necessary for an adequate defense may request such services *ex parte* before a judge or magistrate judge having jurisdiction over the case. Such application shall be heard *in camera* and shall not be revealed without the consent of the defendant. On finding that the services are necessary and that the person is financially unable to afford them, the judge or magistrate judge shall authorize them. An order setting forth the type, purpose, and limitations of such services will be issued by the Court. The judge or magistrate judge may establish a limit on the amount that may be expended or committed for such services within the maximum prescribed by 18 U.S.C. § 3006A(e)(3).
2. Without Prior Request. Counsel appointed pursuant to this Plan may obtain subject to later review, investigative, expert, or other services without prior judicial authorization if they are necessary for an adequate defense. The total cost of services so obtained may not exceed the maximum prescribed by 18 U.S.C. § 3006(A) (e)(2) per individual or corporation providing the services (exclusive of reasonable expenses). However, in the interests of justice and upon finding that timely procurement of necessary services could not await prior authorization, a judge or magistrate judge (in a case entirely disposed of by the magistrate judge)

may approve payment for such services after they have been obtained, even if the services exceed the maximum prescribed by 18 U.S.C. § 3006(A)(e)(2).

3. Necessity of Affidavit. Statements made by or on behalf of the party in support of requests for investigative , expert or other services shall be made or supported by affidavit and filed with the court *in camera* for review and consideration.

H. Compensation - Filing of Vouchers. The Office of the Clerk of Court shall be responsible for the preparation of CJA appointment vouchers. Claims for compensation shall be submitted on the appropriate CJA form accompanied by the CJA voucher worksheets to the Office of the Clerk of Court, which shall review claims for mathematical and technical accuracy and for conformity with the Guidelines for the Administration of the Criminal Justice Act (Volume VII, Guide to Judiciary Policies and Procedures). Approved claims will be paid through the Office of the Clerk of Court using the CJA Panel Attorney Payment System.

1. CJA Guidelines. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
2. Maximum Amounts for Counsel. For representation of a defendant before a magistrate judge or judge of this court, or both, the compensation paid any attorney shall not exceed the maximum prescribed by 18 U.S.C. § 3006A(d)(2).
3. Waiver of Limits on Counsel Fees. Payment in excess of any maximum amount prescribed by 18 U.S.C. § 3006A(d)(2) for counsel fees or for other services may be made for extended or complex representation whenever the judge or magistrate judge (if the representation was entirely before the magistrate judge) certifies that the amount sought is necessary to provide fair compensation and the payment is approved by the Chief Judge of the Second Circuit or such active Circuit Judge to whom the Chief Judge has delegated approval authority. Counsel claiming such excess payment shall submit a detailed memorandum justifying counsel's claim that the representation was in an extended or complex case and that the excess payment is necessary to provide fair compensation.
4. Reduction of CJA Payment. In any case where the judge or magistrate judge intends to reduce the amount of payment requested in a voucher, the CJA attorney shall be notified of the amount of the intended reduction and may request an opportunity for review by the judicial officer. After review of any submission by appointed counsel and the completion of any steps deemed appropriate by the court, the judicial officer shall then take action on the voucher consistent with this Plan, the CJA, and the interests of justice.

- I. Ratio of Appointments. Where practical and cost effective, attorneys from the CJA Panel will be appointed in a substantial proportion of the cases in which the accused is determined to be financially eligible for representation under the CJA. "Substantial" shall be defined as approximately 25 percent of the appointments made pursuant to the CJA annually throughout the District of Vermont.
- J. Conflicts of Interest. Separate counsel shall be appointed for persons having interests which cannot properly be represented by the same counsel. Whenever counsel appointed pursuant to this Plan discovers that a conflict of interest exists, an application to be relieved from the appointment shall be promptly made to the court. Substitute or replacement counsel will be appointed if the court is satisfied that a genuine conflict of interest exists.
- K. Autonomy. No person shall enjoy the right to select, choose or request the appointment of a specific CJA Panel attorney.

VII. REPRESENTATION IN STATE DEATH PENALTY HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254.

- A. Nonapplicability. Currently, the death penalty is not authorized by the state of Vermont. As such, the provisions of Section 2254 of Title 28 United States Code, as they pertain to *state* habeas death penalty relief, are not applicable to the District of Vermont.

VIII. DUTIES OF APPOINTED COUNSEL.

- A. Standards. The services to be rendered a person represented by appointed counsel shall be commensurate with those rendered if counsel were privately employed by the person.
- B. Professional Conduct. Attorneys appointed pursuant to this Plan shall conform to the highest standards of professional conduct as set forth and defined in Local Rule 83.2 of this district.
- C. Professional Responsibility. An attorney appointed pursuant to this Plan shall not delegate any substantive tasks in connection with representation of a defendant or an accused to any person other than a partner or associate of the law firm of which the appointed attorney is a member.
- D. Receipt of Other Payments. Appointed counsel may not require, request, or accept any payment, promise of payment, or any other valuable consideration for representation under the appointment, unless such payment is approved by order of the court.

- E. Continuity of Representation. Once counsel is appointed pursuant to this Plan, representation shall remain continuous including any appeal or review taken by certiorari. Representation shall remain in effect until the case is closed; until substitute counsel has filed a notice of appearance; until an order has been entered allowing or requiring the person represented to proceed *pro se*; or until the appointment is terminated by court order.

IX. DUTIES OF LAW ENFORCEMENT AND RELATED AGENCIES.

- A. Presentation of Accused for Appointment of Counsel. Federal law enforcement and prosecutorial agencies, probation officers, and pretrial services officers in this district, and those acting on their behalf, shall promptly inform any person who is in custody, or who otherwise may be entitled to counsel under the CJA, of their right to counsel, prior to any questioning, and that counsel will be provided without cost if the person is unable to afford counsel. If the person requests counsel, federal law enforcement and prosecutorial agencies are encouraged to inform the person promptly of the existence of the FPDO and how to contact it, regardless of whether the FPDO may ultimately be appointed in their defense. In instances where the person indicates that he or she is not able to secure private representation, the FPDO shall be promptly notified. The FPDO shall discuss with the person the right to representation and right to appointed counsel. If appointment of counsel seems likely, the FPDO shall assist in the completion of a financial affidavit (CJA Form 23) and shall arrange to have the person promptly presented before a magistrate judge or judge of this court for determination of financial eligibility and appointment of counsel.
- B. Pretrial Services Interview. In conformity with District of Vermont Local Rule No. 57.2, the probation officer will attempt to interview each accused *prior to* an initial appearance before the court. If the defendant has retained counsel, the probation officer will attempt to coordinate a joint interview with defendant's counsel. In the event that an accused has no counsel or counsel cannot attend the initial interview, the probation officer may interview an accused in the absence of counsel with the purpose of providing information to the court. In all cases, however, the probation officer will be required to advise an accused of his or her right to decline an interview until such time as counsel is either retained or appointed. The probation officer shall also be responsible for assisting an accused with the preparation and completion of the CJA Form 23 Financial Affidavit, if one has not yet been completed.
- C. Notice of Indictment or Criminal Information. Upon the return or unsealing of an indictment, the filing of a criminal information, or the filing of a petition to modify or revoke probation, the United States Attorney, the Clerk's Office, or the probation officer, as appropriate, shall be responsible for mailing or otherwise delivering a copy of the charging document to counsel for the defendant. If the defendant is without

counsel, the charging document will be forwarded to the address as shown by the defendant's bond papers or to the jail in which the defendant is incarcerated.

X. MISCELLANEOUS.

- A. Forms. Standard forms pertaining to the CJA and approved by the Judicial Conference of the United States or its Committee on Defender Services and prescribed and distributed by the Director of the Administrative Office of the United States Courts, shall be used, where applicable, in all proceedings pursuant to this Plan.
- B. Claims. Claims for compensation of private attorneys providing representation under the CJA shall be submitted on the appropriate CJA form to the Office of the Clerk of the Court. The Clerk's Office shall be responsible for reviewing claims for their mathematical and technical accuracy and for compliance with the *Criminal Justice Act Guidelines*. Upon completion of the review, claims shall be forwarded by the Clerk's Office to the appropriate judge or magistrate judge for consideration by the court. The court will exert its best effort to avoid delays in reviewing payment vouchers and in submitting them for further processing.
- C. Compensable Limits and Expense Thresholds for Appointed Counsel. All compensation limits and expense thresholds as itemized by the *Criminal Justice Act Guidelines*, as amended, apply to this Plan.
- D. Alternative-Rate District. The District of Vermont qualifies as a higher, alternative-rate, Criminal Justice Act claims district, *subject to the availability of funding*. As such, an enhanced, cost-adjusted rate of \$75 per hour for both in-court and out-of-court service is allowable, when funding permits.¹
- E. Use of Financial Information. The Government may not use as part of its direct case in any prosecution, other than a prosecution for perjury or false statements, any information provided by a defendant or an accused in connection with a request for appointment of counsel pursuant to this Plan.
- F. Supersession. This Plan supersedes all prior CJA plans for the District of Vermont.

XI. EFFECTIVE DATE.

¹ Based upon a formal compensation survey conducted during 1991, the District of Vermont qualified as a higher, alternative-rate district beginning January, 1992. However, to date, sufficient funds have not been identified by the Judicial Conference to allow for implementation of the enhanced rate for this district.

This Plan, as revised, shall become effective when approved by the Judicial Council for the Second Circuit Court of Appeals.

ENTERED FOR THE COURT on July 1, 2000.

/s/ **J. Garvan Murtha**
J. Garvan Murtha
Chief Judge, District of Vermont

/s/ **William K. Sessions III**
William K. Sessions III
District Judge, District of Vermont

APPROVED BY THE JUDICIAL COUNCIL FOR THE SECOND CIRCUIT COURT OF APPEALS on July 14, 2000.

/s/ **KAREN G. MILTON**
CHIEF JUDGE OR DESIGNEE
Second Circuit Court of Appeals

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT
CRIMINAL JUSTICE ACT

CJA PANEL APPLICATION FORM

1) Name _____
(Last) (First) (MI)

2) Firm Name _____

3) Office Address _____

4) County _____ DVT Atty. Bar ID No. _____

5) Office Telephone No. _____ Fax No. _____

6) Home Phone _____ Email Address _____

7) *Employer ID No. ____ - ____ - ____ 7a) * Social Security No. ____ - ____ - ____

8) Law School Attended _____

8A) Degree _____ Date Awarded _____

9) Dates of Admission A) District of Vermont _____
B) State of Vermont _____
C) Federal Appellate _____
D) U.S. Supreme Court _____
E) Other _____

10) I have experience in the following types of cases:

___ Civil Rights (42 USC § 1983) ___ Criminal ___ Medical Malpractice ___ Social Security
___ Employment Discrimination ___ Educational ___ Personal Injury ___ Other

***This information is mandatory. If using a law firm Employer Identification Number, the applicant must also provide a Social Security Number.**

11) Experience (*Identify the number of trials you have handled during the last five years.*)

A) CRIMINAL TRIAL EXPERIENCE:

1. Number of Federal Felony Trials: ____

Number of state Felony Trials: ____

2. Number of Federal Misdemeanor Trials: ____

Number of State Misdemeanor Trials: ____

B) CIVIL TRIAL EXPERIENCE:

1) Number of Federal Appeals: ____

Number of State Appeals: ____

C) APPELLATE EXPERIENCE:

1) Number of Federal Appeals: ____

Number of State Appeals: ____

D) OTHER RELEVANT EXPERIENCE:

12) Please list any other pertinent data such as primary area of practice, public positions, etc.

13) Have you completed any courses on Federal Criminal Law? Yes / No

Examples (with dates)

14) I would prefer assignment of cases in the following regional areas of Vermont:

____ Burlington

____ Rutland

____ Brattleboro

____ No Preference

15) I am fluent in the following foreign language(s): _____
(please specify)

FOR CJA COMMITTEE USE ONLY

APPROVED: _____

DATE: _____